

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE MS JUSTICE G.ROHINI

WRIT APPEAL No.801 OF 2007

Between:

Vice Chairman and Managing Director,
Andhra Pradesh State Civil Supplies
Corporation Limited, Hyderabad

. . .Appellant

AND

G.Ganganna and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellant : Shri M.Vijay Kumar

Counsel for respondent No.1 : Shri T.P.Acharya

Counsel for respondent Nos.2 & 3 : Shri G.Dharma Rao

Counsel for respondent No.4 : Shri Abhinand Kumar Shavili

30th October, 2007

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PER G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 23.11.2006 passed by the learned Single Judge in Writ Petition No.22377 of 1995 whereby he ordained retrospective promotion of the writ petitioner (respondent No.1 herein) to the post of Senior Officer Grade – II with effect from 28.09.1989 i.e. the date on which respondent Nos.4 and 5 were promoted pursuant to order dated 19.04.1995 passed by this Court in Writ Petition No.4617 of 1991 and a similar order passed in Writ Petition No.15481 of 1989.

Two grounds on which the appellant has challenged the order of the learned Single Judge are that Andhra Pradesh State Civil Supplies Corporation Limited, Hyderabad which is a juridical person and can sue and be sued in its own name was not impleaded as party to the writ petition and, therefore, no mandamus could have been issued by the learned Single Judge for retrospective promotion of respondent No.1 and that direction for retrospective promotion of the writ petitioner is legally unsustainable because as on 28.09.1989, he was an employee of Essential Commodities Corporation and not the Civil Supplies Corporation.

We have heard learned counsel for the parties and scrutinized the record.

It is not in dispute that respondent No.1 herein joined the services of Civil Supplies Corporation as Technical Assistant in 1976.

In 1981, he was deputed to work in Essential Commodities Corporation with effect from 27.07.1981 and his services were regularized in that Corporation with effect from 27.07.1981. Vide G.O.Ms.No.61, Food and Civil Supplies Department dated 22.01.1994, the Government brought about merger of the two Corporations with effect from 01.01.1991. In terms of clause XI of G.O.Ms.No.61, the inter se seniority of the employees of the two Corporations was required to be determined from the date of regularization in the particular cadre and as respondent No.1 was appointed in the cadre of Assistant Manager with effect from 27.07.1981, he became entitled to be ranked senior to all those who were appointed in that cadre or on equivalent post from the subsequent date. Respondent Nos.2 and 3 who were employed in Civil Supplies Corporation were promoted as Senior Officers during 1989. Respondent Nos.4 and 5 challenged their promotions in Writ Petition Nos.15481 of 1989 and 4617 of 1991. The second writ petition was allowed by the learned Single Judge on 19.04.1995 and a direction was issued for reconsideration of the promotion of respondent Nos.2 and 3. Similar direction was given in Writ Petition No.15481 of 1989. In compliance of those orders, the competent authority of Civil Supplies Corporation considered the cases of respondent Nos.4 and 5 and issued two separate proceedings for their appointment by promotion as Senior Officer Grade II with effect from 28.01.1989. Since the Corporations had been merged in the meanwhile, respondent No.1 filed Writ Petition No.22377 of 1995 claiming retrospective promotion by asserting that he was senior to respondent Nos.2 to 5. The learned Single Judge, after taking cognizance of the policy contained in G.O.Ms.No.61, dated 22.01.1994 declared that the writ petitioner (respondent No.1 herein) is entitled to be treated as senior to respondent Nos.2 to 5 and is entitled to be promoted from the date respondent Nos.2 to 5 were promoted as

Senior Officers Grade II.

In our opinion, even though after merger of the two Corporations, respondent No.1 could be treated senior to respondent Nos.2 to 5 but the merger which was effected from 01.01.1991 could not be made basis for issue of a direction for consideration of his case for promotion to the post of Senior Officer Grade II with effect from 28.09.1989 overlooking the fact that as on that date he was not a member of the services under Civil Supplies Corporation. It is neither the pleaded case of respondent No.1 nor the learned counsel argued that any post in the cadre of Senior Officer Grade II was available in the services of Essential Commodities Corporation in 1989. Therefore, the direction given by the learned Single Judge for retrospective notional promotion of respondent No.1 in the services of Civil Supplies Corporation cannot be sustained.

In view of the above conclusion, we do not consider it necessary to dilate on the question of maintainability of the writ petition filed by respondent No.1 in the backdrop of objection taken by the appellant that the Corporation had not been impleaded as party respondent. We may hasten to add that if this objection was to be decided, perhaps we may have ruled in favour of the appellant in view of the judgment of the Supreme Court in **Ranjeet Mal v. General Manager, Northern Railway, New Delhi**^[1].

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. However, keeping in view the fact that in compliance of the direction given by the learned Single Judge, the appellant Corporation has already granted consequential benefits to respondent No.1, we direct that the appellant shall not initiate process for recovery of the amount already paid to respondent No.1.

As a sequel to disposal of main appeal in the manner indicated above, WAMP No.1606 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

30th October, 2007

G.ROHINI, J

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[\[1\]](#) AIR 1977 SC 1701